

COUNCIL COMMUNICATION

Department: Public Works
Case/Project No.: FY09-06B
Applicant

Ordinance No.
Resolution No. 08-108

Council Action April 28, 2008

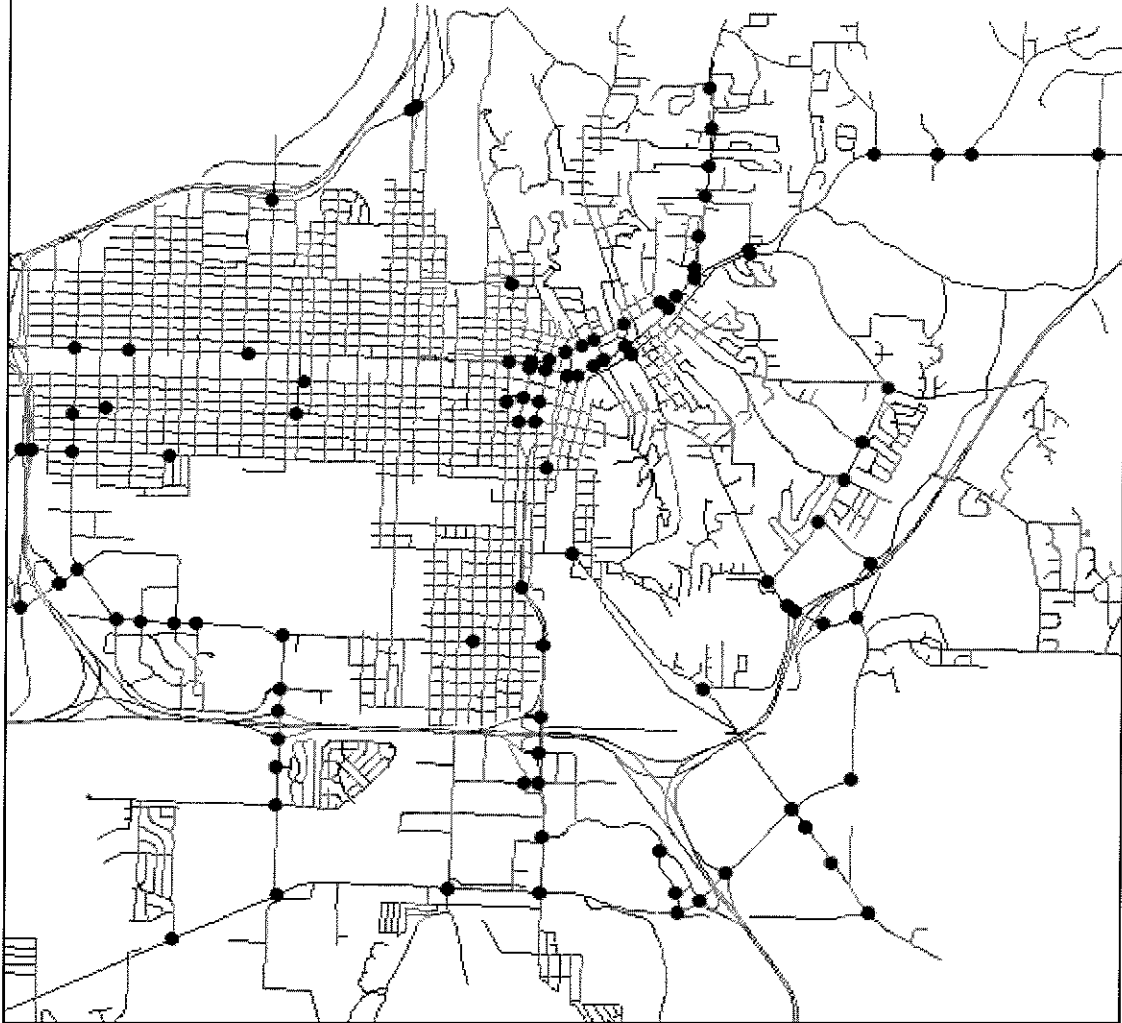
SUBJECT/TITLE

Consideration of a resolution authorizing the Mayor to execute an agreement with HDR Engineering, Inc. for engineering services associated with Traffic Signal System Evaluation and Programming.

BACKGROUND/DISCUSSION

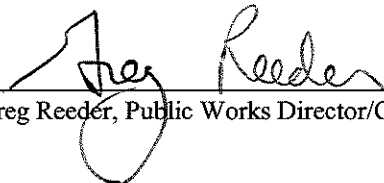
- The City maintains around 100 traffic signals.
- The scope of this engineering contract includes a plan to survey, evaluate, and rate the existing traffic signal equipment and systems to develop a program for short term and long term traffic signal upgrades.
- The scope will also include proposing cost effective solutions and identifying additional funding sources.
- The goal of the effort is to identify signal needs, prioritize those needs, and develop an implementation plan based on available funding.
- The engineering study has a not to exceed cost of \$43,022.50.
- This is project FY09-06B in the CIP and is funded by G O Bonds.

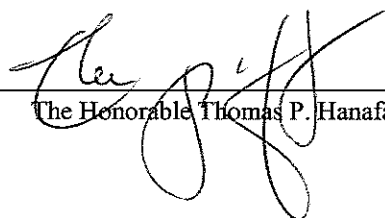
Traffic Signal Systems



RECOMMENDATION

Approval of this resolution.


Greg Reeder, Public Works Director/City Engineer


The Honorable Thomas P. Hanafan, Mayor

RESOLUTION
NO. 08-108

**RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK
TO EXECUTE AN AGREEMENT WITH
HDR ENGINEERING, INC. FOR ENGINEERING SERVICES
IN CONNECTION WITH THE
TRAFFIC SIGNAL SYSTEMS EVALUATION AND PROGRAMMING
FY09-06B**

- WHEREAS, the city wishes to make improvements known as the Traffic Signal Systems Evaluation and Programming, within the city, as therein described; and
- WHEREAS, HDR Engineering, Inc. has submitted an agreement to provide engineering services for the work necessary for said improvements; and
- WHEREAS, the city council deems approval of said agreement to be in the best interest of the City of Council Bluffs.

NOW, THEREFORE, BE IT RESOLVED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA

That the Mayor and City Clerk are hereby authorized and directed to execute an agreement with HDR Engineering, Inc. for engineering services relative to the Traffic Signal Systems Evaluation and Programming.

ADOPTED
AND
APPROVED April 28, 2008

Thomas P. Hanafan, Mayor

ATTEST:

Judith Ridgeley, City Clerk

**SHORT FORM AGREEMENT BETWEEN OWNER AND HDR ENGINEERING,
INC. FOR PROFESSIONAL SERVICES**

THIS AGREEMENT is made as of this 26th day of March, 2008, between City of Council Bluffs, Iowa ("OWNER"), with principal offices at 209 Pearl Street, Council Bluffs, Iowa, 51503, and HDR Engineering, Inc., ("ENGINEER") a Nebraska corporation, with principal offices at 8404 Indian Hills Drive, Omaha, Nebraska, 68114 for services in connection with the project known as Traffic Signal Systems Evaluation and Programming ("Project");

WHEREAS, OWNER desires to engage ENGINEER to provide professional engineering, consulting and related services ("Services") in connection with the Project; and

WHEREAS, ENGINEER desires to render these Services as described in SECTION I, Scope of Services.

NOW, THEREFORE, OWNER and ENGINEER in consideration of the mutual covenants contained herein, agree as follows:

SECTION I. SCOPE OF SERVICES

ENGINEER will provide Services for the Project, which consist of the Scope of Services as outlined on the attached Exhibit A.

SECTION II. TERMS AND CONDITIONS OF ENGINEERING SERVICES

The "HDR Engineering, Inc. Terms and Conditions for Professional Services," which are attached hereto in Exhibit B, are incorporated into this Agreement by this reference as if fully set forth herein.

SECTION III. RESPONSIBILITIES OF OWNER

The OWNER shall be responsible for providing available information for the study area and obtaining access to the study area for data gathering activities. The OWNER will also provide the information set forth in paragraph 6 of the attached "HDR Engineering, Inc. Terms and Conditions for Professional Services."

SECTION IV. COMPENSATION

Compensation for ENGINEER'S services under this Agreement shall be at an hourly basis of a multiplier of 2.84 times direct labor cost plus expenses with a maximum not to exceed fee of \$43,022.50. Direct Labor Cost shall mean salaries and wages, (basic and overtime) paid to all personnel engaged directly on the Project.

Reimbursable Expense shall mean the actual expenses incurred directly or indirectly in connection with the Project for transportation travel, subconsultants, subcontractors, computer usage, telephone, telex, shipping and express, and other incurred expense.

SECTION V. PERIOD OF SERVICE

Upon receipt of written authorization to proceed, ENGINEER shall perform the services as outlined in Exhibit "A" within approximately 3 months from notice to proceed.

Unless otherwise stated in this Agreement, the rates of compensation for ENGINEER'S services have been agreed to in anticipation of the orderly and continuous progress of the project through completion. If any specified dates for the completion of ENGINEER'S services are exceeded through no fault of the ENGINEER, the time for performance of those services shall be automatically extended for a period which may be reasonably required for their completion and all rates, measures and amounts of ENGINEER'S compensation shall be equitably adjusted.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year first written above.

City of Council Bluffs, Iowa

"OWNER"

BY: _____

NAME: _____

TITLE: _____

ADDRESS: _____

HDR Engineering, Inc.

"ENGINEER"

BY: Matthew Tondl

NAME: Matthew Tondl

TITLE: Senior Vice President

ADDRESS: 8404 Indian Hills Drive
Omaha, NE 68114

EXHIBIT "A"**Traffic Signal Systems Evaluation and
Programming Scope****Background**

The Traffic Maintenance Division (TMD) of the Council Bluffs Public Works Department is responsible for the design, installation and maintenance of all traffic signals within the City. This scope of work outlines a plan to survey, evaluate, and rate the existing traffic signal equipment and systems to develop a program for short-term and long-term traffic upgrades. This effort will include proposing cost-effective solutions while identifying additional funding sources. Currently, seven of the top two-hundred intersections listed as an Iowa DOT Intersection Safety Improvement Candidate Location (SICL) are within Council Bluffs and may be available for safety funding.

The following tasks outline the approach for conducting this work.

Task 1 -- Data Gathering

- 1.1 In coordination with Public Works Department, develop and deliver a questionnaire and conduct interviews with TMD staff to obtain information on current traffic signal issues, problems and needs. Tour the TMD office, maintenance equipment and storage facilities.
- 1.2 Obtain available City, County and State traffic signal data such as GIS, digital files, layouts, equipment records, crash histories, traffic volumes, emergency pre-emption plans and ITS plans.
- 1.3 Review current City traffic signal specifications and standard plans.
- 1.4 Conduct brief site visits of all signalized locations within the City and create site visit records formatted by the consultant in coordination with the City (database, GIS, or other). Photos of each traffic signal pole and the controller cabinet will be taken for use in the city GIS system.
- 1.5 Conduct five travel time runs during the AM and PM peak hours for the following corridors in both directions. Data will be gathered under appropriate weather conditions and mid-week timeframes (Tuesday, Wednesday, Thursday).
 - W. Broadway (approximately 1.8 miles)
 - 35th Street to 16th Street
 - 7 Signals
 - Kanesville Boulevard (approximately 1.5 miles)
 - 8th Street to North Avenue
 - 11 Signals
 - South Expressway (approximately 1.7 miles)
 - 19th Avenue to Highway 275
 - 7 Signals
 - Madison Avenue (approximately 0.6 miles)
 - Bennett Avenue to Valley View Drive
 - 6 Signals

EXHIBIT "A"

Task 2 – Staffing and Facility Operations

- 2.1 Evaluate information obtained from questionnaire and interviews with TMD staff and assess the time allocation between various job duties throughout the year.
- 2.2 Review and evaluate the current use of contractors for TMD maintenance responsibilities.
- 2.3 Identify strategies that would assist current TMD staff to best allocate their time and to maximize the efficiency in the use of contractors.
- 2.4 Evaluate the current TMD facility and identify future facility needs that would enhance daily efficiency of the staff and operations.

Task 3 – Traffic Signal Evaluations

- 3.1 In coordination with TMD personnel, create a rating scale for the evaluation of signalized locations (including such criteria as age of equipment, condition of equipment, and technology).
- 3.2 Using data gathered from City personnel and field visits, rate each signalized location and prioritize needs. Identify locations that have immediate or high priority for improvements. Summarize the intersection ratings for use in the city GIS system.
- 3.3 Prepare City-wide layout of existing and planned communication lines (both twisted pair and fiber) in order to establish a plan for implementing future communication systems.
- 3.4 Summarize the travel time runs and compare the average speed through each corridor relative to the posted speeds. Rank each corridor based on the results.

Task 4 – System Planning and Prioritization

- 4.1 Research safety funding sources such as USTEP, ICAP, RISE etc. Identify projects where these funds may be applicable.
- 4.2 Suggest implementation plan for a traffic count program that can be used for traffic signal timing updates and traffic studies.
- 4.3 Identify immediate needs and suggest improvements for 2008 based on available funding. Additionally, prepare improvement plan for the 2009-10 budget years as well as for the One and Five Year Plan (2011 – 2015).
- 4.4 Prepare documentation of findings and recommendations.

EXHIBIT "A"

Schedule

Complete this effort within 3 months of the notice to proceed.

Follow-up activities

Additional work effort to identify signal timing solutions in the identified corridors.

Conduct travel time runs after implementation of improvements in the identified corridors for comparison.

EXHIBIT "B"

HDR Engineering, Inc. Terms and Conditions for Professional Services

1. STANDARD OF PERFORMANCE

The standard of care for all professional engineering, consulting and related services performed or furnished by ENGINEER and its employees under this Agreement will be the care and skill ordinarily used by members of ENGINEER's profession practicing under the same or similar circumstances at the same time and in the same locality. ENGINEER makes no warranties, express or implied, under this Agreement or otherwise, in connection with ENGINEER's services.

2. INSURANCE

ENGINEER agrees to procure and maintain, at its expense, Workers' Compensation insurance as required by statute; Employer's Liability of \$250,000; Automobile Liability insurance of \$1,000,000 combined single limit for bodily injury and property damage covering all vehicles, including hired vehicles, owned and non-owned vehicles; Commercial General Liability insurance of \$1,000,000 combined single limit for personal injury and property damage; and Professional Liability insurance of \$1,000,000 per claim for protection against claims arising out of the performance of services under this Agreement caused by negligent acts, errors, or omissions for which ENGINEER is legally liable. Upon request, OWNER shall be made an additional insured on Commercial General and Automobile Liability insurance policies and certificates of insurance will be furnished to the OWNER. ENGINEER agrees to indemnify OWNER for the claims covered by ENGINEER's insurance.

3. OPINIONS OF PROBABLE COST (COST ESTIMATES)

Any opinions of probable project cost or probable construction cost provided by ENGINEER are made on the basis of information available to ENGINEER and on the basis of ENGINEER's experience and qualifications, and represents its judgment as an experienced and qualified professional engineer. However, since ENGINEER has no control over the cost of labor, materials, equipment or services furnished by others, or over the contractor(s) methods of determining prices, or over competitive bidding or market conditions, ENGINEER does not guarantee that proposals, bids or actual project or construction cost will not vary from opinions of probable cost ENGINEER prepares.

4. CONSTRUCTION PROCEDURES

ENGINEER's observation or monitoring portions of the work performed under construction contracts shall not relieve the contractor from its responsibility for performing work in accordance with applicable contract documents. ENGINEER shall not control or have charge of, and shall not be responsible for, construction means, methods, techniques, sequences, procedures of construction, health or safety programs or precautions connected with the work and shall not manage, supervise, control or have charge of construction. ENGINEER shall not be responsible for the acts or omissions of the contractor or other parties on the project. ENGINEER shall be entitled to review all construction contract documents and to require that no provisions extend the duties or liabilities of ENGINEER beyond those set forth in this Agreement. OWNER agrees to include ENGINEER as an indemnified party in OWNER's construction contracts for the work, which shall protect ENGINEER to the same degree as OWNER. Further, OWNER agrees that ENGINEER shall be listed as an additional insured under the construction contractor's liability insurance policies.

5. CONTROLLING LAW

This Agreement is to be governed by the law of the state where ENGINEER's services are performed.

6. SERVICES AND INFORMATION

OWNER will provide all criteria and information pertaining to OWNER's requirements for the project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations. OWNER will also provide copies of any OWNER-furnished Standard Details, Standard

Specifications, or Standard Bidding Documents which are to be incorporated into the project.

OWNER will furnish the services of soils/geotechnical engineers or other consultants that include reports and appropriate professional recommendations when such services are deemed necessary by ENGINEER. The OWNER agrees to bear full responsibility for the technical accuracy and content of OWNER-furnished documents and services.

In performing professional engineering and related services hereunder, it is understood by OWNER that ENGINEER is not engaged in rendering any type of legal, insurance or accounting services, opinions or advice. Further, it is the OWNER's sole responsibility to obtain the advice of an attorney, insurance counselor or accountant to protect the OWNER's legal and financial interests. To that end, the OWNER agrees that OWNER or the OWNER's representative will examine all studies, reports, sketches, drawings, specifications, proposals and other documents, opinions or advice prepared or provided by ENGINEER, and will obtain the advice of an attorney, insurance counselor or other consultant as the OWNER deems necessary to protect the OWNER's interests before OWNER takes action or forebears to take action based upon or relying upon the services provided by ENGINEER.

7. SUCCESSORS AND ASSIGNS

OWNER and ENGINEER, respectively, bind themselves, their partners, successors, assigns, and legal representatives to the covenants of this Agreement. Neither OWNER nor ENGINEER will assign, sublet, or transfer any interest in this Agreement or claims arising therefrom without the written consent of the other.

8. RE-USE OF DOCUMENTS

All documents, including all reports, drawings, specifications, computer software or other items prepared or furnished by ENGINEER pursuant to this Agreement, are instruments of service with respect to the project. ENGINEER retains ownership of all such documents. OWNER may retain copies of the documents for its information and reference in connection with the project; however, none of the documents are intended or represented to be suitable for reuse by OWNER or others on extensions of the project or on any other project. Any reuse without written verification or adaptation by ENGINEER for the specific purpose intended will be at OWNER's sole risk and without liability or legal exposure to ENGINEER, and OWNER will defend, indemnify and hold harmless ENGINEER from all claims, damages, losses and expenses, including attorney's fees, arising or resulting therefrom. Any such verification or adaptation will entitle ENGINEER to further compensation at rates to be agreed upon by OWNER and ENGINEER.

9. TERMINATION OF AGREEMENT

OWNER or ENGINEER may terminate the Agreement, in whole or in part, by giving seven (7) days written notice, if the other party substantially fails to fulfill its obligations under the Agreement through no fault of the terminating party. Where the method of payment is "lump sum," or cost reimbursement, the final invoice will include all services and expenses associated with the project up to the effective date of termination. An equitable adjustment shall also be made to provide for termination settlement costs ENGINEER incurs as a result of commitments that had become firm before termination, and for a reasonable profit for services performed.

10. SEVERABILITY

If any provision of this agreement is held invalid or unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any provision, term or condition shall not be construed by the other party as a waiver of any subsequent breach of the same provision, term or condition.

EXHIBIT "B"

11. INVOICES

ENGINEER will submit monthly invoices for services rendered and OWNER will make prompt payments in response to ENGINEER's invoices.

ENGINEER will retain receipts for reimbursable expenses in general accordance with Internal Revenue Service rules pertaining to the support of expenditures for income tax purposes. Receipts will be available for inspection by OWNER's auditors upon request.

If OWNER disputes any items in ENGINEER's invoice for any reason, including the lack of supporting documentation, OWNER may temporarily delete the disputed item and pay the remaining amount of the invoice. OWNER will promptly notify ENGINEER of the dispute and request clarification and/or correction. After any dispute has been settled, ENGINEER will include the disputed item on a subsequent, regularly scheduled invoice, or on a special invoice for the disputed item only.

OWNER recognizes that late payment of invoices results in extra expenses for ENGINEER. ENGINEER retains the right to assess OWNER interest at the rate of one percent (1%) per month, but not to exceed the maximum rate allowed by law, on invoices which are not paid within thirty (30) days from the date of the invoice. In the event undisputed portions of ENGINEER's invoices are not paid when due, ENGINEER also reserves the right, after seven (7) days prior written notice, to suspend the performance of its services under this Agreement until all past due amounts have been paid in full.

12. CHANGES

The parties agree that no change or modification to this Agreement, or any attachments hereto, shall have any force or effect unless the change is reduced to writing, dated, and made part of this Agreement.

The execution of the change shall be authorized and signed in the same manner as this Agreement. Adjustments in the period of services and in compensation shall be in accordance with applicable paragraphs and sections of this Agreement. Any proposed fees by ENGINEER are estimates to perform the services required to complete the project as ENGINEER understands it to be defined. For those projects involving conceptual or process development services, activities often are not fully definable in the initial planning. In any event, as the project progresses, the facts developed may dictate a change in the services to be performed, which may alter the scope. ENGINEER will inform OWNER of such situations so that changes in scope and adjustments to the time of performance and compensation can be made as required. If such change, additional services, or suspension of services results in an increase or decrease in the cost of or time required for performance of the services, an equitable adjustment shall be made, and the Agreement modified accordingly.

13. CONTROLLING AGREEMENT

These Terms and Conditions shall take precedence over any inconsistent or contradictory provisions contained in any proposal, contract, purchase order, requisition, notice-to-proceed, or like document.

14. EQUAL EMPLOYMENT AND NONDISCRIMINATION

In connection with the services under this Agreement, ENGINEER agrees to comply with the applicable provisions of federal and state Equal Employment Opportunity, and other employment, statutes and regulations.

15. HAZARDOUS MATERIALS

OWNER represents to ENGINEER that, to the best of its knowledge, no hazardous materials are present at the project site. However, in the event hazardous materials are known to be present, OWNER represents that to the best of its knowledge it has disclosed to ENGINEER the existence of all such hazardous materials, including but not limited to asbestos, PCB's, petroleum, hazardous waste, or radioactive material located at or near the project site, including type, quantity and location of such hazardous materials. It is acknowledged by both parties that ENGINEER's scope of services do not include services related in any way to hazardous materials. In the event ENGINEER or any other party encounters undisclosed hazardous materials, ENGINEER shall have the obligation to notify OWNER and, to the extent required by

law or regulation, the appropriate governmental officials, and ENGINEER may, at its option and without liability for delay, consequential or any other damages to OWNER, suspend performance of services on that portion of the project affected by hazardous materials until OWNER: (i) retains appropriate specialist consultant(s) or contractor(s) to identify and, as appropriate, abate, remediate, or remove the hazardous materials; and (ii) warrants that the project site is in full compliance with all applicable laws and regulations. OWNER acknowledges that ENGINEER is performing professional services for OWNER and that ENGINEER is not and shall not be required to become an "arranger," "operator," "generator," or "transporter" of hazardous materials, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1990 (CERCLA), which are or may be encountered at or near the project site in connection with ENGINEER's services under this Agreement. If ENGINEER's services hereunder cannot be performed because of the existence of hazardous materials, ENGINEER shall be entitled to terminate this Agreement for cause on 30 days written notice. To the fullest extent permitted by law, OWNER shall indemnify and hold harmless ENGINEER, its officers, directors, partners, employees, and subconsultants from and against all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) caused by, arising out of or resulting from hazardous materials, provided that (i) any such cost, loss, or damage is attributable to bodily injury, sickness, disease, or death, or injury to or destruction of tangible property (other than completed Work), including the loss of use resulting therefrom, and (ii) nothing in this paragraph shall obligate OWNER to indemnify any individual or entity from and against the consequences of that individual's or entity's sole negligence or willful misconduct.

16. EXECUTION

This Agreement, including the exhibits and schedules made part hereof, constitute the entire Agreement between ENGINEER and OWNER, superseding and controlling over all prior written or oral understandings. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by the parties.

17. LIMITATION OF LIABILITY

ENGINEER's and its employees' total liability to OWNER for any loss or damage, including but not limited to special and consequential damages arising out of or in connection with the performance of services or any other cause, including ENGINEER's and its employees' professional negligent acts, errors, or omissions, shall not exceed the greater of \$50,000 or the total compensation received by ENGINEER hereunder, except as otherwise provided under this Agreement, and OWNER hereby releases and holds harmless ENGINEER and its employees from any liability above such amount.

18. LITIGATION SUPPORT

In the event ENGINEER is required to respond to a subpoena, government inquiry or other legal process related to the services in connection with a legal or dispute resolution proceeding to which ENGINEER is not a party, OWNER shall reimburse ENGINEER for reasonable costs in responding and compensate ENGINEER at its then standard rates for reasonable time incurred in gathering information and documents and attending depositions, hearings, and trial.

19. UTILITY LOCATION

If underground sampling/testing is to be performed, a local utility locating service shall be contacted to make arrangements for all utilities to determine the location of underground utilities. In addition, OWNER shall notify ENGINEER of the presence and location of any underground utilities located on the OWNER's property which are not the responsibility of private/public utilities. ENGINEER shall take reasonable precautions to avoid damaging underground utilities that are properly marked. The OWNER agrees to waive any claim against ENGINEER and will indemnify and hold ENGINEER harmless from any claim of liability, injury or loss caused by or allegedly caused by ENGINEER's damaging of underground utilities that are not properly marked or are not called to ENGINEER's attention prior to beginning the underground sampling/testing.

COUNCIL COMMUNICATION

Department: Public Works
Case/Project No.: FY09-09
Applicant _____

Ordinance No. _____
Resolution No. 08-122

First Reading April 28, 2008

SUBJECT/TITLE

Council consideration of a resolution accepting the bid of Leazenby Construction, Inc. in the amount of \$2,383,239.30 for the Broadway Streetscape-Phase I also called (Downtown Streetscape-Phase VII-Broadway.)

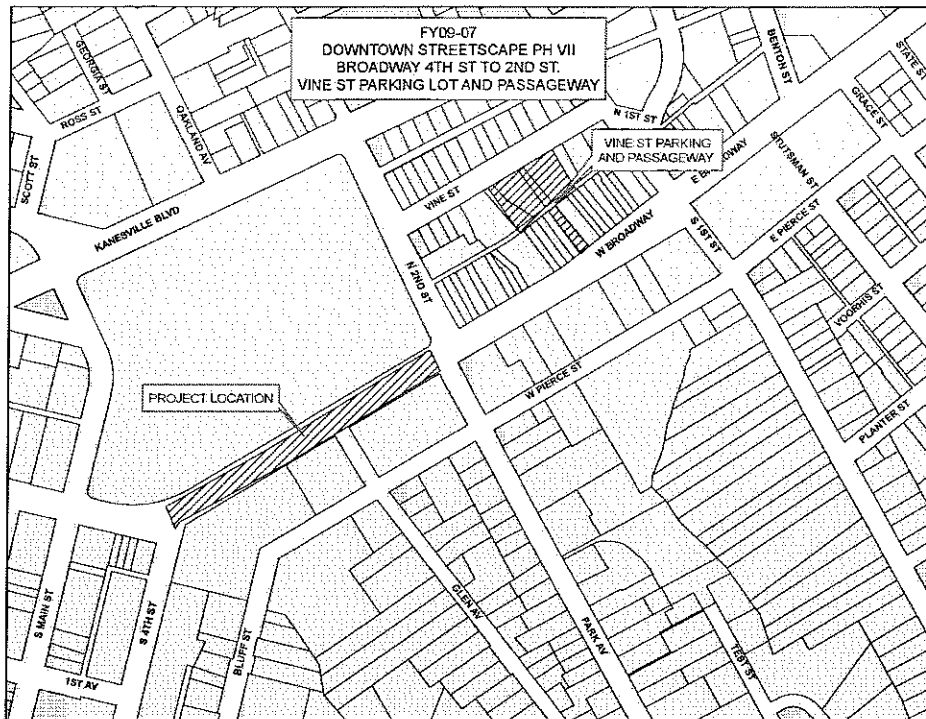
BACKGROUND/DISCUSSION

- On April 17, 2008, bids were received in the office of the City Clerk as followed:

	Division I <u>General</u>	Division II <u>Pave/Appur</u>	Division III <u>Storm</u>	Division IV <u>Sanitary</u>	Division V <u>Water Main</u>	Division VI <u>Traffic Signal</u>	Division VIII <u>Amenities/Sidewalk</u>	<u>Total</u>
Leazenby Const.	\$47,487.03	\$578,242.24	\$156,037.61	\$123,691.49	\$201,934.05	\$141,772.90	\$1,134,073.98	\$2,383,239.30
R. D. Blue Const.	\$70,943.75	\$580,352.04	\$151,971.35	\$128,910.00	\$202,964.45	\$141,750.35	\$1,118,932.68	\$2,395,824.62
Engineer's Opinion	\$41,932.00	\$464,225.00	\$151,490.50	\$145,261.00	\$221,074.00	\$ 96,855.50	\$1,049,601.50	\$2,170,439.50

- The city, in partnership with Iowa West Foundation has implemented a program to rebuild the downtown public infrastructure and incorporate a streetscape theme. Six phases have been completed to date. The first phase was in 1998 and the sixth was in 2003.
- To date the total cost of the program is \$10,266,000.
- Proposed is Phase VII overall and Phase I of II for the Broadway section. Phase I is from 4th Street to 2nd Street and Phase II is from 2nd Street to 1st Street.
- Improvements in Phase VII include street, storm sewer, and sanitary sewer replacement. Streetscape amenities include landscaping, irrigation, walls, entry columns, interpretive elements, benches, street lights, and decorative concrete and brick.
- The scope of Phase VII also includes rehab of the Vine Street parking lot and the alley behind the 100 block of West Broadway. The passageway that connects the 100 block to the Vine Street parking lot will also be improved.
- This is project FY09-07 in the CIP and total cost of the project is estimated at \$2,100,000. The city has programmed \$1,900,000 in FY09 GO Bonds. There is an Iowa West Foundation grant for \$1,050,000.

Project schedule provides for a public hearing March 24th, letting April 17th, award of contract April 28th, and construction completion by the end of 2008.



RECOMMENDATION

Approval of this resolution.

Greg Reeder

Greg Reeder, Public Works Director/City Engineer

The Honorable Thomas P. Hanafan, Mayor

RESOLUTION
NO. 08-122

**RESOLUTION AUTHORIZING THE MAYOR AND CITY CLERK
TO EXECUTE AN AGREEMENT WITH
LEAZENBY CONSTRUCTION, INC. FOR THE
BROADWAY STREETSCAPE – PHASE I ALSO CALLED
(DOWNTOWN STREETSCAPE-PHASE VII-BROADWAY)
FY09-09**

- WHEREAS, the plans, specifications, and form of contract for the Broadway Streetscape-Phase I also called (Downtown Streetscape Phase VII – Broadway) are on file in the office of the City Clerk; and
- WHEREAS, a Notice of Public Hearing was published, as required by law, and a public hearing was held on March 24, 2008, and the plans, specifications and form of contract were approved; and
- WHEREAS, Leazenby Construction, Inc. has submitted a low bid in the amount of \$2,383,239.30 for this contract.

**NOW, THEREFORE, BE IT RESOLVED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA**

That the bid of Leazenby Construction, Inc. in the amount of \$2,383,239.30 is hereby accepted as the lowest and best bid received for said work; and

BE IT FURTHER RESOLVED

That the City Council does hereby award the contract in connection with the Broadway Streetscape-Phase I also called (Downtown Streetscape Phase VII – Broadway); and

BE IT FURTHER RESOLVED

That the Mayor and City Clerk are hereby authorized, empowered, and directed to execute an agreement with Leazenby Construction, Inc. for and on behalf of the City of Council Bluffs, upon approval by the City Attorney of the certificate of insurance and payment and performance bonds as required by the contract specifications.

ADOPTED
AND
APPROVED April 28, 2008

Thomas P. Hanafan, Mayor

ATTEST:

Judith Ridgeley, City Clerk

C.A. April 28, 2008

TO: Thomas P. Hanafan, Mayor

FROM: Donn Dierks, Director of Public Health

SUBJECT: Assessment for Removal of Solid Waste Nuisance from Private Property and Public Right-of-Way or for Removal of Solid Waste Nuisance Deemed an Emergency

This item is a resolution assessing \$2,809.00 in unpaid costs of solid waste abatement against these properties. It is recommended that Council pass this resolution.

PERTINENT FACTS

The properties were inspected by personnel of the Department of Public Health and found to contain a nuisance of solid waste on private property or on public right-of-way, as specified in municipal code 10.02.040 and/or 4.12.140. The title-holder of record was notified by posting notice on the property and given 48 hours to remove materials from public right-of-way and 3 days to remove materials from private property.

Or, in the case of a nuisance deemed an emergency, Municipal code 10.02.060 states that the "city may perform any action required by this chapter without prior notice to the abutting property owner, and assess the costs and administrative charges in the same fashion as set out in 10.02.040."

CASE HISTORY

Upon failure of the owner to abate the problems, the property was referred to the city contractor who abated the nuisance. The city was billed for this work and has paid the contractor. We have in turn sent a statement to the titleholder of record requesting payment of this amount plus the cost to the city for enforcing the ordinance. To date, payment has not been received and at least ten (10) days have elapsed from the date of billing.

ALTERNATIVE ACTIONS

City Ordinance states that these unpaid costs "may be assessed against the property for collection in the same manner as a property tax, pursuant to the provisions of Section 364.12 of the Code of Iowa. An additional administrative fee shall be added to each delinquent account if it is certified for collection by the county auditor."

8C

1. Take no action: The cost of the abatement at these properties will be paid from the general fund. Thus, the cost will be spread among all taxpayers including the vast majority who care for their property, keeping it free of solid waste.
2. Asses the costs to the specific property: Thus, the responsible property owner will bear the cost of failing to comply with City Ordinance (unless they choose not to pay the taxes). In addition to all costs incurred, an additional \$50.00 has been added to each amount to help pay for the extra work involved in the assessment process.

RECOMMENDED ACTION

We recommend that the Council adopt alternative 2: Assessment of all costs against the properties. This resolution accomplishes this alternative.

RESOLUTION NO. 08-123

WHEREAS, City Ordinance No. 5219 and 5220, passed and approved by the Council Bluffs City Council on May 22, 1995, requires all property owners to abate any nuisance upon public right-of-way of materials stored for more than 24 hours, or materials stored on private property for more than 3 days,
and

WHEREAS, the owner of each specific property was given proper notification to remove materials from public right-of-way and from private property,
and/or

WHEREAS, An emergency existed as defined in section 10.02.060 and /or 4.12.140
and

WHEREAS, the owner failed to remove the materials in the allotted time,
and

WHEREAS, the City, through it's contractor removed the materials,
and

WHEREAS, the City has billed the owner by mail for the cost of removing the materials from their properties,
and

WHEREAS, more than 10 days have elapsed since the billing and the bills remain unpaid:
and

WHEREAS, the City Council may have these unpaid costs assessed against the properties from which the materials were removed pursuant to Section 10.02.070 or 4.12.140 of the Municipal Code of the City of Council Bluffs, Iowa,

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COUNCIL BLUFFS, IOWA:

That the unreimbursed costs incurred by the City for the removal of nuisances found on these properties be assessed against said properties;
and

BE IT FURTHER RESOLVED that the City Clerk is hereby authorized, empowered and directed to certify said properties and assessments to the Pottawattamie County Treasurer to be collected in the same manner as a property tax.

ADOPTED
AND
APPROVED April 28, 2008

BY: _____
Thomas P. Hanafan, Mayor

ATTEST: _____
Judith Ridgeley, City Clerk

007 Winter-Spring Abateaments								
Parcel Number	Address	Location description	Name	Num.	Total			
544 25 355 008	809 AVE C	GRIMES ADDITION LOT 0002BLOCK 0005	RIGG, PATRICK	SW 15	\$243.00			
544 25 427 006	317 N 1ST ST	ORIGINAL PLAT LT 4 LT 45	R-R EQUITIES LLC	SW 12	\$217.00			
544 27 309 003	3311 AVE D	PERRYS SECOND ADD LT 11 BLK I	PALEN, CHARLES H	SW 28	\$233.00			
544 28 407 014	3605 AVE D	SECTION 28-75-44 NW SE W38' LT 2 E2' LT 3	OKERBLOOM, NATHAN-JOHN	SW 19	\$277.00			
544 28 483 021	3436 AVE A	FERRY ADD LT 7 BLK 16	LOVELESS, GLORIA J	SW 17	\$217.00			
544 28 483 021	3436 AVE A	FERRY ADD LT 7 BLK 16	LOVELESS, GLORIA J	SW 29	\$250.40			
544 33 204 002	3635 2ND AVE	FERRY ADD LT 25 BLK 30	RICHARDS, R LEROY	SW 14	\$250.00			
544 33 279 008	3501 5TH AVE	BROWNS SUB LT 1 BLK 28	BROWN, CAROLYN K ETAL	SW 20	\$258.00			
544 34 257 013	2750 8TH AVE	TWIN CITY PLACE LT 20 AND W17.5' LT 21 BLK 8	STOCKTON, KATHLEEN A	SW 22	\$249.00			
544 35 162 025	706 S 21ST ST	JEFFERIS HOME PLACE LOTS 4, 5 AND N21.5' LT 6 BLK 3	ASHBAUGH, CONSTANCE K	SW 18	\$226.20			
544 35 257 010	1528 6TH AVE	EVERETT'S ADD LT 11 BLK 21	CHRISTO, WILLIAM B SR ESTATE	SW 24	\$401.40			
544 36 205 022	122 BLUFF ST	JACKSONS ADD S1/2 LT 5 AND N10' LT 6 BLK 2 & PT VAC BLUFF ST ADJ	ROLLINS, WALTER ESTATE	SW 21	\$230.00			

C.A. April 28, 2008

TO: Thomas P. Hanafan, Mayor
FROM: Donn Dierks, Director of Public Health
SUBJECT: Assessment of Weed Abatement Costs

This item is a resolution assessing \$7,470.23 in unpaid costs of weed abatement against these properties. It is recommended that Council pass this resolution.

PERTINENT FACTS

The properties were inspected by personnel of the Department of Public Health and found to contain weeds, brush and/or debris in violation of City Ordinance 4.19.010 or 8.54.010. The titleholder of record was notified by mail of the violation and given at least seven (7) days to abate the nuisance.

CASE HISTORY

Upon failure of the owner to comply with the notice the property was referred to the city weed contractor who abated the weeds, brush and/or debris. The city was billed for this work and has paid the contractor. We have in turn sent a statement to the titleholder of record requesting payment of this amount plus the cost to the city for enforcing the ordinance. To date, payment has not been received and at least ten (10) days have elapsed from the date of billing as required by ordinance.

The Council has for the past twenty-five years assessed all costs of weed abatement against other properties.

ALTERNATIVE ACTIONS

City Ordinance states that these costs "may be assessed", therefore, there are two major alternatives possible:

1. Take no action: The cost of weed abatement at these lots will be paid from the general fund. Thus, the cost will be spread among all taxpayers including the vast majority who care for their property and keep it cut.

2. Asses the costs to the specific property: Thus, the responsible property owner will bear the cost of failing to comply with City Ordinance (unless they choose not to pay the taxes). In addition to all costs incurred, an additional \$50.00 has been added to each amount to help pay for the extra work involved in the assessment process.

RECOMMENDED ACTION

We recommend that the Council adopt alternative 2: Assessment of all costs against the properties. This resolution accomplishes this alternative.

RESOLUTION NO. 08-124

WHEREAS, City Ordinance No. 4849, passed and approved by the Council Bluffs City Council on April 15, 1988, requires all property owners within the City of Council Bluffs, Iowa, to cut or destroy all weeds exceeding 18 inches in height;

and

WHEREAS, all property owners in Council Bluffs were notified of the above requirements by ordinance and by publication in the Council Bluffs Nonpareil.

and

WHEREAS, the owner of each specific property was notified by regular mail and given at least seven (7) days to abate the nuisance;

and

WHEREAS, the City, through its contractor, has attempted to cut or destroy all weeds exceeding 18 inches in height found upon property where the owners have failed to cut or destroy the weeds themselves;

and

WHEREAS, more than ten days have elapsed since the City has billed each property owner by mail for the cost of removing the weeds from their properties;

and

WHEREAS, the cost of weed abatement on these properties has been incurred by the City and remains unpaid;

and

WHEREAS, the City Council may have these unpaid costs assessed against the properties from which the weeds were removed pursuant to Section 4.19.010 or 8.54.010 of the Municipal Code of the City of Council Bluffs, Iowa, and Section 364.12(3) (g) and (h) of the State Code of Iowa:

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COUNCIL BLUFFS, IOWA:

That the unreimbursed costs incurred by the City for the abatement of weeds found upon the properties be assessed against said properties;

and

BE IT FURTHER RESOLVED that the City Clerk is hereby authorized, empowered and directed to certify said properties and assessments to the Pottawattamie County Treasurer to be collected in the same manner as a property tax.

ADOPTED
AND
APPROVED April 28, 2008

BY: _____
Thomas P. Hanafan, Mayor

ATTEST: _____
Judith Ridgeley, City Clerk

Council Communication

Department:	Ordinance No.	
Case/Project No.	Resolution No. <u>08-125</u>	Date: <u>April 28, 2008</u>
Subject/Title		
Resolutions imposing penalties against three liquor license establishments for selling, dispensing, giving, or otherwise supplying alcohol to a minor.		
Background/Discussion		
In January, 2008, Council Bluffs Police Officers conducted compliance checks at several liquor license establishments in Council Bluffs. We are pursuing civil penalties against the establishments that served alcohol to a minor. Resolutions have been prepared imposing \$500 fines against the following businesses that have not requested hearings: 1) Klemco, Inc., d/b/a Spillway Grill & Bar, 1840 Madison Avenue; 2) MJ's Pizza & Brews, 2752 W. Broadway; and 3) Ante Up, Inc., d/b/a The Longest Yard Sports Bar & Grill, 2411 South 24 th Street.		
Recommendation		
Adopt the resolutions imposing penalties against these liquor license establishments.		

Don Bauermeister, Asst. City Attorney

Department Head Signature

Mayor Signature

8 E

RESOLUTION NO. 08-125

A RESOLUTION imposing penalties against MJ's Pizza & Brews, 2752 West Broadway, for violation of Iowa Code Chapter 123 and/or Council Bluffs Municipal Code Section 3.08.190 for selling, dispensing, giving or otherwise supplying alcohol to a minor under the age of twenty-one.

WHEREAS, Iowa Code Section 123.9 allows local authorities to suspend or revoke a liquor control license or beer or wine permit for any licensee/permittee and/or to impose a civil penalty (fine) against any licensee/permittee who violates any of the provisions of Chapter 123 of the Iowa Code or Council Bluffs Municipal Code provisions concerning alcoholic beverages; and

WHEREAS, Section 123.49(2)(h) provides that "no person shall sell, dispense, give or otherwise supply an alcoholic liquor, wine or beer to a minor under the age of twenty-one (21) years", and Council Bluffs Municipal Code Section Council Bluffs Municipal Code Section 3.08.190 provides, in part: "No person or club holding a liquor license or beer permit nor his or her agents or employees shall do any of the following: Sell, give, or otherwise supply any alcoholic beverage or beer to any person knowing or having reasonable cause to believe him or her to be under legal age, or permit any person knowing or having reasonable cause to believe him or her to be under legal age, to consume any alcoholic beverage or beer."

WHEREAS, the above-named licensee/permittee () did (X) did not make a timely written request for a public hearing, and this matter will be determined () with (XX) without public hearing; and

WHEREAS, there being sufficient evidence to prove that on or about January 10, 2008, the above-named licensee/permittee, or an employee or agent of same, sold, dispensed, gave or supplied an alcoholic beverage, beer, or wine to a minor, or allowed a person under legal age to consume an alcoholic beverage, beer, or wine; and

WHEREAS, this is the first offense by the above-named licensee/permittee.

NOW, THEREFORE, BE IT RESOLVED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA:

That the above-named licensee/permittee is found to be in violation of Council Bluffs Municipal Code Section 3.08.190 for sale to a minor or allowing a minor to consume; and

BE IT FURTHER RESOLVED:

That this is the first offense by the above-named licensee/permittee, and the following penalty shall be imposed:

 X \$500.00 Fine to be paid no later than 5:00 p.m. on the 10th business day after the adoption of this resolution;

 Suspension - No sale of alcoholic beverages, beer, or wine for a period of day(s) month(s), beginning at 2:01 a.m. on the 10th business day after the adoption of this resolution;

 Revocation – No sale of alcoholic beverages, beer, or wine beginning at 2:01 a.m. on the 10th business day after the adoption of this resolution.

ADOPTED

AND

APPROVED April 28, 2008

THOMAS P. HANAFAN

Mayor

Attest:

JUDITH RIDGELEY

City Clerk

Council Communication

Department:	Ordinance No.	
Case/Project No.	Resolution No. 08-126	Date: <u>April 28, 2008</u>
Subject/Title		
Resolutions imposing penalties against three liquor license establishments for selling, dispensing, giving or otherwise supplying alcohol to a minor.		
Background/Discussion		
In January, 2008, Council Bluffs Police Officers conducted compliance checks at several liquor license establishments in Council Bluffs. We are pursuing civil penalties against the establishments that served alcohol to a minor. Resolutions have been prepared imposing \$500 fines against the following businesses that have not requested hearings: 1) Klemco, Inc., d/b/a Spillway Grill & Bar, 1840 Madison Avenue; 2) MJ's Pizza & Brews, 2752 W. Broadway; and 3) Ante Up, Inc., d/b/a The Longest Yard Sports Bar & Grill, 2411 South 24 th Street.		
Recommendation		
Adopt the resolutions imposing penalties against these liquor license establishments.		

Don Bauermeister, Asst. City Attorney

Department Head Signature

Mayor Signature

8 F

RESOLUTION NO. 08-126

A RESOLUTION imposing penalties against Ante Up, Inc., d/b/a The Longest Yard Sports Bar & Grill, 2411 South 24th Street, for violation of Iowa Code Chapter 123 and/or Council Bluffs Municipal Code Section 3.08.190 for selling, dispensing, giving or otherwise supplying alcohol to a minor under the age of twenty-one.

WHEREAS, Iowa Code Section 123.9 allows local authorities to suspend or revoke a liquor control license or beer or wine permit for any licensee/permittee and/or to impose a civil penalty (fine) against any licensee/permittee who violates any of the provisions of Chapter 123 of the Iowa Code or Council Bluffs Municipal Code provisions concerning alcoholic beverages; and

WHEREAS, Section 123.49(2)(h) provides that “no person shall sell, dispense, give or otherwise supply an alcoholic liquor, wine or beer to a minor under the age of twenty-one (21) years”, and Council Bluffs Municipal Code Section Council Bluffs Municipal Code Section 3.08.190 provides, in part: “No person or club holding a liquor license or beer permit nor his or her agents or employees shall do any of the following: Sell, give, or otherwise supply any alcoholic beverage or beer to any person knowing or having reasonable cause to believe him or her to be under legal age, or permit any person knowing or having reasonable cause to believe him or her to be under legal age, to consume any alcoholic beverage or beer.”

WHEREAS, the above-named licensee/permittee () did (X) did not make a timely written request for a public hearing, and this matter will be determined () with (XX) without public hearing; and

WHEREAS, there being sufficient evidence to prove that on or about January 10, 2008, the above-named licensee/permittee, or an employee or agent of same, sold, dispensed, gave or supplied an alcoholic beverage, beer, or wine to a minor, or allowed a person under legal age to consume an alcoholic beverage, beer, or wine; and

WHEREAS, this is the first offense by the above-named licensee/permittee.

NOW, THEREFORE, BE IT RESOLVED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA:

That the above-named licensee/permittee is found to be in violation of Council Bluffs Municipal Code Section 3.08.190 for sale to a minor or allowing a minor to consume; and

BE IT FURTHER RESOLVED:

That this is the first offense by the above-named licensee/permittee, and the following penalty shall be imposed:

 X \$500.00 Fine to be paid no later than 5:00 p.m. on the 10th business day after the adoption of this resolution;

 Suspension - No sale of alcoholic beverages, beer, or wine for a period of day(s) month(s), beginning at 2:01 a.m. on the 10th business day after the adoption of this resolution;

 Revocation – No sale of alcoholic beverages, beer, or wine beginning at 2:01 a.m. on the 10th business day after the adoption of this resolution.

ADOPTED

AND

APPROVED April 28, 2008

THOMAS P. HANAFAN

Mayor

Attest:

JUDITH RIDGELEY

City Clerk

Council Communication

Department:	Ordinance No.	
Case/Project No.	Resolution No. <u>08-127</u>	Date: <u>April 28, 2008</u>
Subject/Title		
Resolutions imposing penalties against three liquor license establishments for selling, dispensing, giving, or otherwise supplying alcohol to a minor.		
Background/Discussion		
In January, 2008, Council Bluffs Police Officers conducted compliance checks at several liquor license establishments in Council Bluffs. We are pursuing civil penalties against the establishments that served alcohol to a minor. Resolutions have been prepared imposing \$500 fines against the following businesses that have not requested hearings: 1) Klemco, Inc., d/b/a Spillway Grill & Bar, 1840 Madison Avenue; 2) MJ's Pizza & Brews, 2752 W. Broadway; and 3) Ante Up, Inc., d/b/a The Longest Yard Sports Bar & Grill, 2411 South 24 th Street.		
Recommendation		
Adopt the resolutions imposing penalties against these liquor license establishments.		

Don Bauermeister, Asst. City Attorney

Department Head Signature

Mayor Signature

RESOLUTION NO. 08-127

A RESOLUTION imposing penalties against Klemco, Inc., d/b/a Spillway Grill & Bar, 1840 Madison Avenue, for violation of Iowa Code Chapter 123 and/or Council Bluffs Municipal Code Section 3.08.190 for selling, dispensing, giving or otherwise supplying alcohol to a minor under the age of twenty-one.

WHEREAS, Iowa Code Section 123.9 allows local authorities to suspend or revoke a liquor control license or beer or wine permit for any licensee/permittee and/or to impose a civil penalty (fine) against any licensee/permittee who violates any of the provisions of Chapter 123 of the Iowa Code or Council Bluffs Municipal Code provisions concerning alcoholic beverages; and

WHEREAS, Section 123.49(2)(h) provides that “no person shall sell, dispense, give or otherwise supply an alcoholic liquor, wine or beer to a minor under the age of twenty-one (21) years”, and Council Bluffs Municipal Code Section Council Bluffs Municipal Code Section 3.08.190 provides, in part: “No person or club holding a liquor license or beer permit nor his or her agents or employees shall do any of the following: Sell, give, or otherwise supply any alcoholic beverage or beer to any person knowing or having reasonable cause to believe him or her to be under legal age, or permit any person knowing or having reasonable cause to believe him or her to be under legal age, to consume any alcoholic beverage or beer.”

WHEREAS, the above-named licensee/permittee () did (X) did not make a timely written request for a public hearing, and this matter will be determined () with (XX) without public hearing; and

WHEREAS, there being sufficient evidence to prove that on or about January 10, 2008, the above-named licensee/permittee, or an employee or agent of same, sold, dispensed, gave or supplied an alcoholic beverage, beer, or wine to a minor, or allowed a person under legal age to consume an alcoholic beverage, beer, or wine; and

WHEREAS, this is the first offense by the above-named licensee/permittee.

NOW, THEREFORE, BE IT RESOLVED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA:

That the above-named licensee/permittee is found to be in violation of Council Bluffs Municipal Code Section 3.08.190 for sale to a minor or allowing a minor to consume; and

BE IT FURTHER RESOLVED:

That this is the first offense by the above-named licensee/permittee, and the following penalty shall be imposed:

 X \$500.00 Fine to be paid no later than 5:00 p.m. on the 10th business day after the adoption of this resolution;

 Suspension - No sale of alcoholic beverages, beer, or wine for a period of day(s) month(s), beginning at 2:01 a.m. on the 10th business day after the adoption of this resolution;

 Revocation – No sale of alcoholic beverages, beer, or wine beginning at 2:01 a.m. on the 10th business day after the adoption of this resolution.

ADOPTED
AND
APPROVED April 28, 2008

THOMAS P. HANAFAN Mayor

Attest:

JUDITH RIDGELEY City Clerk

Council Communication

Department: Legal	Ordinance No. Resolution No. <u>08-128</u>	First Reading Second Reading Third Reading _____
Subject/Title		
Resolution authorizing the Mayor to execute the Order Accepting the Acknowledgement/Settlement Agreement from Scott Street Pub, 25 Scott Street, for a first violation of the State's tobacco laws.		
Background/Discussion		
A compliance check on March 3, 2008, resulted in a citation being issued to an employee of Scott Street Pub for providing tobacco to a minor. We are pursuing civil penalties against the permittee. Scott Street Pub has made payment of the \$300 penalty and has submitted their Acknowledgement/Settlement Agreement. A resolution has been prepared authorizing the Mayor to execute the Order to Accept the Acknowledgement/Settlement Agreement from Scott Street Pub.		
Recommendation		
Authorize the Mayor to execute Order Accepting the Acknowledgement/Settlement Agreement from Scott Street Pub, 25 Scott Street, for a first violation of the State's tobacco laws.		

Don Bauermeister, Asst. City Attorney

Department Head Signature

Mayor Signature

RESOLUTION NO. 08-128

A RESOLUTION authorizing the Mayor to execute an Order Accepting the Acknowledgement/Settlement Agreement from Scott Street Pub, 25 Scott Street, Council Bluffs, IA 51501, for a violation of Iowa Code Section 453A.2(1).

WHEREAS, the State of Iowa has enacted a comprehensive program aimed at reducing underage tobacco use; and

WHEREAS, compliance checks in Council Bluffs resulted in a citation being issued to an employee of Scott Street Pub, 25 Scott Street; and

WHEREAS, the mandatory civil penalty has been paid, and it is in the best interest of the City to execute an Order Accepting the Acknowledgement/Settlement Agreement for this violation.

NOW, THEREFORE, BE IT RESOLVED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA:

That the Mayor is hereby authorized to execute the Order Accepting the Acknowledgement/Settlement Agreement from Scott Street Pub, 25 Scott Street, Council Bluffs, IA 51503, for a violation of Iowa Code Section 453A.2.

ADOPTED
AND
APPROVED April 28, 2008

THOMAS P. HANAFAN Mayor

Attest:

JUDITH RIDGELEY City Clerk

BEFORE THE CITY COUNCIL
FOR THE CITY OF COUNCIL BLUFFS, IOWA

IN RE:

SCOTT STREET PUB
25 SCOTT STREET
COUNCIL BLUFFS, IA 51503

ORDER ACCEPTING
ACKNOWLEDGEMENT/SETTLEMENT
AGREEMENT – 1ST VIOLATION

ON this 28th day of April, 2008, in lieu of a public hearing on the matter, the City Council approves the attached Acknowledgement/Settlement Agreement between the above-captioned permittee and the City of Council Bluffs, Iowa.

THEREFORE, the City Council for the City of Council Bluffs, Iowa, FINDS that the above-captioned permittee has remitted to the City of Council Bluffs, Iowa, a civil penalty in the amount of three hundred dollars (\$300.00). Be advised that this sanction will count as a first violation of Iowa Code Section 453A.2(1), pursuant to Iowa Code Section 453A.22(2)(a).

IT IS THEREFORE ORDERED that the judgment in this matter is hereby satisfied.

THOMAS P. HANAFAN Mayor

Attest:

JUDITH RIDGELEY City Clerk

March 31, 2008

BDC, Inc.
25 Scott Street
Council Bluffs, IA 51503

RE: Scott Street Pub
25 Scott Street
Council Bluffs, IA 51503

The City of Council Bluffs has scheduled a hearing before the City Council at 3:45 p.m. on the 28th day of April, 2008, in the City Council Chambers, 2nd Floor, City Hall, 209 Pearl Street, Council Bluffs, Iowa. The hearing complaint, which has been filed against you, is attached.

If you, or your representative, fail to appear at this hearing, a decision may be rendered against you. You have the opportunity to be heard at this hearing and to be represented by an attorney at your own expense regarding the **mandatory** \$300.00 civil penalty prescribed by Iowa Code Section 453A.22(2)(a) for the violation of Iowa Code Section 453A.2(1), selling, giving, or otherwise supplying any tobacco, tobacco products, or cigarettes to any person under eighteen years of age.

If you wish to settle this case in lieu of the public hearing, you may complete the attached Acknowledgment/Settlement Agreement, returning the original copy, properly signed and dated, to the office of the City Attorney, 209 Pearl Street, Council Bluffs, IA 51503, no later than ten (10) business days prior to the hearing date. With this Acknowledgement/Settlement Agreement, you must include a check in the amount of \$300.00, made out to the City of Council Bluffs, Iowa. This will satisfy the penalty for a first violation under Iowa Code Section 453A.22(2), and will conclude the matter.

If you have any questions, you may reach me by phone at (712) 328-4620, or if you have obtained representation by an attorney in this matter, he/she should contact me.

Sincerely,

Don Bauermeister
Asst. City Attorney

cc: City Clerk

IN RE:

Scott Street Pub
25 Scott Street
Council Bluffs, IA 51503

HEARING COMPLAINT

The City of Council Bluffs, Iowa, hereby makes the following complaint against the above-named permittee:

1. Iowa Code Section 453A.2(1) provides that a person shall not “sell, give, or otherwise supply any tobacco, tobacco products, or cigarettes to any person under eighteen years of age.”
2. Iowa Code Section 453A.22(2)(a) provides that if a permit holder or employee of a permit holder has violated Iowa Code Section 453A.2(1), the permit holder shall be assessed a civil penalty of three hundred dollars (\$300.00) for a first violation of Iowa Code Section 453A.2(1).
3. On or about March 3, 2008, the permittee or an employee of the permittee sold cigarettes or tobacco products to a person under eighteen years of age. A copy of the criminal citation is attached and incorporated herein.
4. Therefore, in accordance with Iowa law, the City of Council Bluffs requests the Council Bluffs City Council find a violation of the above-referenced sections of Iowa Code Chapter 453A and assess a civil penalty in the amount of three hundred dollars (\$300.00) against Scott Street Pub, 25 Scott Street, Council Bluffs, IA 51503.

Don Bauermeister, Asst. City Attorney
209 Pearl Street
Council Bluffs, IA 51503
(712) 328-4620

IN RE:

Scott Street Pub
25 Scott Street
Council Bluffs, IA 51503

**ACKNOWLEDGEMENT/SETTLEMENT
AGREEMENT**

I/We hereby knowingly and voluntarily acknowledge that we have received the Notice of Hearing and the Complaint in the above case. I/We hereby knowingly and voluntarily acknowledge the facts and allegations contained in the complaint, attached hereto and incorporated herein by reference, and knowingly and voluntarily admit that the same are true and correct. I/We hereby knowingly and voluntarily waive hearing, and submit to the statutory penalties prescribed by Iowa law. I/We understand that this penalty will count as an official "First Violation" of Iowa Code Section 453A.2 pursuant to Iowa Code Section 453A.22. I/We have enclosed a check in the amount of \$300.00, made payable to the City of Council Bluffs, Iowa, to settle the above-referenced complaint.

DATED this _____ day of _____, 20____.

NOTE: This must be signed by an individual cigarette permittee or, in the case of another business entity, by individual(s) who have authority to bind the entity.

If you decide to sign this Acknowledgment/Settlement Agreement and waive your appearance at a hearing, this document (properly signed and dated), along with your \$300.00 check made payable to the City of Council Bluffs, Iowa, should be returned to:

City Attorney's Office
209 Pearl Street
Council Bluffs, IA 51503

Council Communication

Department: Legal	Ordinance No.	
Case/Project No.	Resolution No. <u>08-129</u>	Date: <u>April 28, 2008</u>
Subject/Title Resolution authorizing the Mayor to execute the Order Accepting the Acknowledgement/Settlement Agreement from Travel Centers of America, Inc., 3210 South 7 th Street, for a first violation of the State's tobacco laws.		
Background/Discussion A compliance check on March 3, 2008, resulted in a citation being issued to an employee of Travel Centers of America, Inc., for providing tobacco to a minor. We are pursuing civil penalties against the permittee. Travel Centers of America, Inc. has made payment of the \$300 penalty and has submitted their Acknowledgement/Settlement Agreement. A resolution has been prepared authorizing the Mayor to execute the Order to Accept the Acknowledgement/Settlement Agreement from Travel Centers of America, Inc.		
Recommendation Authorize the Mayor to execute Order Accepting the Acknowledgement/Settlement Agreement from Travel Centers of America, Inc., 3210 South 7 th Street, for a first violation of the State's tobacco laws,		

Don Bauermeister, Asst. City Attorney

Department Head Signature

Mayor Signature

March 31 2008

Travel Centers of America, Inc.
24601 Center Ridge Road
Westlake, OH 44145

RE: Travel Centers of America, Inc.
3210 South 7th Street
Council Bluffs, IA 51501

The City of Council Bluffs has scheduled a hearing before the City Council at 3:45 p.m. on the 28th day of April, 2008, in the City Council Chambers, 2nd Floor, City Hall, 209 Pearl Street, Council Bluffs, Iowa. The hearing complaint, which has been filed against you, is attached.

If you or your representative fails to appear at this hearing, a decision may be rendered against you. You have the opportunity to be heard at this hearing and to be represented by an attorney at your own expense regarding the **mandatory** \$300.00 civil penalty prescribed by Iowa Code Section 453A.22(2)(a) for the violation of Iowa Code Section 453A.2(1), selling, giving, or otherwise supplying any tobacco, tobacco products, or cigarettes to any person under eighteen years of age.

If you wish to settle this case in lieu of the public hearing, you may complete the attached Acknowledgment/Settlement Agreement, returning the original copy, properly signed and dated, to the office of the City Attorney, 209 Pearl Street, Council Bluffs, IA 51503, no later than ten (10) business days prior to the hearing date. With this Acknowledgement/Settlement Agreement, you must include a check in the amount of \$300.00, made out to the City of Council Bluffs, Iowa. This will satisfy the penalty for a first violation under Iowa Code Section 453A.22(2), and will conclude the matter.

If you have any questions, you may reach me by phone at (712) 328-4620, or if you have obtained representation by an attorney in this matter, he/she should contact me.

Sincerely,

Don Bauermeister
Asst. City Attorney

cc: City Clerk

IN RE:

Travel Centers of America, Inc.
3210 South 7th Street
Council Bluffs, IA 51501

HEARING COMPLAINT

The City of Council Bluffs, Iowa, hereby makes the following complaint against the above-named permittee:

1. Iowa Code Section 453A.2(1) provides that a person shall not “sell, give, or otherwise supply any tobacco, tobacco products, or cigarettes to any person under eighteen years of age.”

2. Iowa Code Section 453A.22(2)(a) provides that if a permit holder or employee of a permit holder has violated Iowa Code Section 453A.2(1), the permit holder shall be assessed a civil penalty of three hundred dollars (\$300.00) for a first violation of Iowa Code Section 453A.2(1).

3. On or about March 3, 2008, the permittee or an employee of the permittee sold cigarettes or tobacco products to a person under eighteen years of age. A copy of the criminal citation is attached and incorporated herein.

4. Therefore, in accordance with Iowa law, the City of Council Bluffs requests the Council Bluffs City Council find a violation of the above-referenced sections of Iowa Code Chapter 453A and assess a civil penalty in the amount of three hundred dollars (\$300.00) against Travel Centers of America, Inc., 3210 South 7th Street, Council Bluffs, IA 51501.

Don Bauermeister, Asst. City Attorney
209 Pearl Street
Council Bluffs, IA 51503
(712) 328-4620

IN RE:

Travel Centers of America, Inc.
3210 South 7th Street
Council Bluffs, IA 51501

**ACKNOWLEDGEMENT/SETTLEMENT
AGREEMENT**

ACKNOWLEDGEMENT/SETTLEMENT AGREEMENT

I/We hereby knowingly and voluntarily acknowledge that we have received the Notice of Hearing and the Complaint in the above case. I/We hereby knowingly and voluntarily acknowledge the facts and allegations contained in the complaint, attached hereto and incorporated herein by reference, and knowingly and voluntarily admit that the same are true and correct. I/We hereby knowingly and voluntarily waive hearing, and submit to the statutory penalties prescribed by Iowa law. I/We understand that this penalty will count as an official "First Violation" of Iowa Code Section 453A.2 pursuant to Iowa Code Section 453A.22. I/We have enclosed a check in the amount of \$300.00, made payable to the City of Council Bluffs, Iowa, to settle the above-referenced complaint.

DATED this _____ day of _____, 20____.

NOTE: This must be signed by an individual cigarette permittee or, in the case of another business entity, by individual(s) who have authority to bind the entity.

If you decide to sign this Acknowledgment/Settlement Agreement and waive your appearance at a hearing, this document (properly signed and dated), along with your \$300.00 check made payable to the City of Council Bluffs, Iowa, should be returned to:

City Attorney's Office
209 Pearl Street
Council Bluffs, IA 51503

RESOLUTION NO. 08-129

A RESOLUTION authorizing the Mayor to execute an Order Accepting the Acknowledgement/Settlement Agreement from Travel Centers of America, Inc., 3210 South 7th Street, Council Bluffs, IA 51501, for a violation of Iowa Code Section 453A.2(1).

WHEREAS, the State of Iowa has enacted a comprehensive program aimed at reducing underage tobacco use; and

WHEREAS, compliance checks in Council Bluffs resulted in a citation being issued to an employee of Travel Centers of America, Inc., 3210 South 7th Street; and

WHEREAS, the mandatory civil penalty has been paid, and it is in the best interest of the City to execute an Order Accepting the Acknowledgement/Settlement Agreement for this violation.

NOW, THEREFORE, BE IT RESOLVED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA:

That the Mayor is hereby authorized to execute the Order Accepting the Acknowledgement/Settlement Agreement from Travel Centers of America, Inc., 3210 South 7th Street, Council Bluffs, IA 51501, for a violation of Iowa Code Section 453A.2.

ADOPTED
AND
APPROVED April 28, 2008

THOMAS P. HANAFAN Mayor

Attest:

JUDITH RIDGELEY City Clerk

BEFORE THE CITY COUNCIL
FOR THE CITY OF COUNCIL BLUFFS, IOWA

IN RE:

TRAVEL CENTERS OF AMERICA, INC.
3210 S. 7TH STREET
COUNCIL BLUFFS, IA 51501

ORDER ACCEPTING
ACKNOWLEDGEMENT/SETTLEMENT
AGREEMENT – 1ST VIOLATION

ON this 28th day of April, 2008, in lieu of a public hearing on the matter, the City Council approves the attached Acknowledgement/Settlement Agreement between the above-captioned permittee and the City of Council Bluffs, Iowa.

THEREFORE, the City Council for the City of Council Bluffs, Iowa, FINDS that the above-captioned permittee has remitted to the City of Council Bluffs, Iowa, a civil penalty in the amount of three hundred dollars (\$300.00). Be advised that this sanction will count as a first violation of Iowa Code Section 453A.2(1), pursuant to Iowa Code Section 453A.22(2)(a).

IT IS THEREFORE ORDERED that the judgment in this matter is hereby satisfied.

THOMAS P. HANAFAN Mayor

Attest:

JUDITH RIDGELEY City Clerk

Council Communication

Department: Legal	Ordinance No. Resolution No. <u>08-130</u>	Date: <u>April 28, 2008</u>
<div style="text-align: center;">Subject/Title</div> Resolution authorizing the Mayor to execute an Order Accepting the Acknowledgement/Settlement Agreement from Mario's Bar and Laundry, 719 South Main Street, for a violation of Iowa's tobacco laws.		
A compliance check on February 18, 2008, resulted in a citation being issued to an employee of Mario's Bar and Laundry for selling tobacco to a minor. Because the employee had completed the tobacco compliance employee training program, the permittee has elected to assert an affirmative defense allowed under Iowa Code Section 4.53A.22(3). A retailer may only assert this defense once in a four-year period.		
<div style="text-align: center;">Recommendation</div> Authorize the Mayor to execute Order Accepting the Acknowledgement/Settlement Agreement from Mario's Bar and Laundry.		

Don Bauermeister, Asst. City Attorney

Department Head Signature

Mayor Signature

RESOLUTION NO. 08-130

A RESOLUTION authorizing the Mayor to execute an Order Accepting the Acknowledgement/Settlement Agreement from Mario's Bar and Laundry, 719 South Main Street, Council Bluffs, IA 51501, for a violation of Iowa Code Section 453A.2(1).

WHEREAS, the State of Iowa has enacted a comprehensive program aimed at reducing underage tobacco use; and

WHEREAS, compliance checks in Council Bluffs resulted in a citation being issued to an employee of Mario's Bar and Laundry on or about February 18, 2008; and

WHEREAS, the permittee has elected to assert an affirmative defense under Iowa Code Section 453A.22(3). The affirmative defense is allowed, because the employee charged with the violation had completed the tobacco compliance employee training program; and

WHEREAS, it is in the best interest of the City to execute an Order accepting the Acknowledgement/Settlement Agreement from the above business for this violation.

NOW, THEREFORE, BE IT RESOLVED
BY THE CITY COUNCIL
OF THE
CITY OF COUNCIL BLUFFS, IOWA

That the Mayor is hereby authorized to execute the Order Accepting the Acknowledgement/Settlement Agreement from Mario's Bar and Laundry, for a violation of Iowa Code Section 453A.2.

ADOPTED
AND
APPROVED April 28, 2008

THOMAS P. HANAFAN Mayor

Attest: _____
JUDITH RIDGELEY City Clerk

BEFORE THE CITY COUNCIL
FOR THE CITY OF COUNCIL BLUFFS, IOWA

IN RE:

Mario's Bar & Laundry
719 South Main Street
Council Bluffs, IA 51503

**ACKNOWLEDGEMENT/SETTLEMENT
AGREEMENT**

I/We hereby knowingly and voluntarily acknowledge that I (we) have received the Complaint in the above case. I/We hereby knowingly and voluntarily acknowledge the facts and allegations contained in the complaint, attached hereto and incorporated herein by reference, and knowingly and voluntarily admit that the same are true and correct. I/We hereby knowingly and voluntarily admit that Melody Lambertson sold tobacco to a minor on February 18, 2008. I/We have submitted the required documents to show that the employee charged with the violation stated in the complaint completed the tobacco compliance employee training program pursuant to Section 453A.5 at the time of the violation. I/We hereby assert an affirmative defense under Iowa Code Section 453A.22(3). I/We understand that the affirmative defense asserted for the violation dated February 18, 2008, may only be used once in a four-year period to bar prosecution of the legal owner. I/We understand that in order to conclude this matter the Council Bluffs City Council must approve this settlement agreement.

DATED this _____ day of _____, 20__.

NOTE: This must be signed by an individual cigarette permittee or, in the case of another business entity, by individual(s) who have authority to bind the entity.

Please return this document (properly signed and dated), along with the documents proving that the employee has completed the required training to assert the affirmative defense to:

City Attorney's Office
209 Pearl Street
Council Bluffs, IA 51503

March 31, 2008

Mario's Bar & Laundry
719 South Main Street
Council Bluffs, IA 51503

This letter is sent as a reminder that a hearing has been scheduled for 3:45 p.m. on Monday, April 14, 2008, regarding a violation of Iowa Code Section 453A.2(1), for selling, giving, or otherwise supplying any tobacco, tobacco products, or cigarettes to any person under 18 years of age.

If you have any questions, please contact this office.

Sincerely,

Don Bauermeister
Assistant City Attorney

March 14, 2008

Caliente Enterprises, LLC
719 South Main Street
Council Bluffs, IA 51503

RE: Mario's Bar & Laundry
719 South Main Street
Council Bluffs, IA 51503

The City of Council Bluffs has scheduled a hearing before the City Council at 3:45 p.m. on the 14th day of April, 2008, in the City Council Chambers, 2nd Floor, City Hall, 209 Pearl Street, Council Bluffs, Iowa. The hearing complaint, which has been filed against you, is attached.

If you, or your representative, fail to appear at this hearing, a decision may be rendered against you. You have the opportunity to be heard at this hearing and to be represented by an attorney at your own expense regarding the **mandatory** \$300.00 civil penalty prescribed by Iowa Code Section 453A.22(2)(a) for the violation of Iowa Code Section 453A.2(1), selling, giving, or otherwise supplying any tobacco, tobacco products, or cigarettes to any person under eighteen years of age.

If you wish to settle this case in lieu of the public hearing, you may complete the attached Acknowledgment/Settlement Agreement, returning the original copy, properly signed and dated, to the office of the City Attorney, 209 Pearl Street, Council Bluffs, IA 51503, no later than ten (10) business days prior to the hearing date. With this Acknowledgement/Settlement Agreement, you must include a check in the amount of \$300.00, made out to the City of Council Bluffs, Iowa. This will satisfy the penalty for a first violation under Iowa Code Section 453A.22(2), and will conclude the matter.

If you have any questions, you may reach me by phone at (712) 328-4620, or if you have obtained representation by an attorney in this matter, he/she should contact me.

Sincerely,

Don Bauermeister
Asst. City Attorney

cc: City Clerk

IN RE:

Mario's Bar & Laundry
719 South Main Street
Council Bluffs, IA 51503

HEARING COMPLAINT

The City of Council Bluffs, Iowa, hereby makes the following complaint against the above-named permittee:

1. Iowa Code Section 453A.2(1) provides that a person shall not "sell, give, or otherwise supply any tobacco, tobacco products, or cigarettes to any person under eighteen years of age."
2. Iowa Code Section 453A.22(2)(a) provides that if a permit holder or employee of a permit holder has violated Iowa Code Section 453A.2(1), the permit holder shall be assessed a civil penalty of three hundred dollars (\$300.00) for a first violation of Iowa Code Section 453A.2(1).
3. On or about February 18, 2008, the permittee or an employee of the permittee sold cigarettes or tobacco products to a person under eighteen years of age. A copy of the criminal citation is attached and incorporated herein.
4. Therefore, in accordance with Iowa law, the City of Council Bluffs requests the Council Bluffs City Council find a violation of the above-referenced sections of Iowa Code Chapter 453A and assess a civil penalty in the amount of three hundred dollars (\$300.00) against Mario's Bar & Laundry, 719 South Main Street, Council Bluffs, IA 51503.

Don Bauermeister, Asst. City Attorney
209 Pearl Street
Council Bluffs, IA 51503
(712) 328-4620

IN RE:

Mario's Bar & Laundry
719 South Main Street
Council Bluffs, IA 51503

**ACKNOWLEDGEMENT/SETTLEMENT
AGREEMENT**

I/We hereby knowingly and voluntarily acknowledge that we have received the Notice of Hearing and the Complaint in the above case. I/We hereby knowingly and voluntarily acknowledge the facts and allegations contained in the complaint, attached hereto and incorporated herein by reference, and knowingly and voluntarily admit that the same are true and correct. I/We hereby knowingly and voluntarily waive hearing, and submit to the statutory penalties prescribed by Iowa law. I/We understand that this penalty will count as an official "First Violation" of Iowa Code Section 453A.2 pursuant to Iowa Code Section 453A.22. I/We have enclosed a check in the amount of \$300.00, made payable to the City of Council Bluffs, Iowa, to settle the above-referenced complaint.

DATED this _____ day of _____, 20____.

NOTE: This must be signed by an individual cigarette permittee or, in the case of another business entity, by individual(s) who have authority to bind the entity.

If you decide to sign this Acknowledgment/Settlement Agreement and waive your appearance at a hearing, this document (properly signed and dated), along with your \$300.00 check made payable to the City of Council Bluffs, Iowa, should be returned to:

City Attorney's Office
209 Pearl Street
Council Bluffs, IA 51503